

Editor's note: appealed -- aff'd, Civ.No. 81-299 (D. Wyo. Feb. 2, 1982), aff'd in part, rev'd in part, No. 82-1443 (10th Cir. Nov. 7, 1983) 721 F.2d 694; cert. denied, 104 S.Ct. 2347, 466 US 972 (May 14, 1984)

NANCY L. STEWART
RESOURCE SERVICE CO., INC.

IBLA 81-375

Decided July 16, 1981

Appeal from decision of the Wyoming State Office, Bureau of Land Management, rejecting first-drawn drawing entry card. W 62740.

Affirmed.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases:
Applications: Sole Party in Interest -- Oil and Gas Leases:
First-Qualified Applicant

When an individual files an oil and gas lease offer through a leasing service under an agreement whereby the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment, or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein, and in any payments of overriding royalties retained. Such an agreement creates for the leasing service an "interest" in the lease as that term is defined in 43 CFR 3100.0-5(b).

2. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases:
Applications: Sole Party in Interest -- Oil and Gas Leases:
First-Qualified Applicant

Where an individual files an oil and gas lease offer through a leasing service under an agreement with the service which has been determined to create an interest in the lease for the service, and the service files a "waiver" of that interest (which, by its own terms, does not apply to the service agreement) with the BLM prior to a simultaneous drawing, without communicating such "waiver" to the client, and without any contractual consideration running from the client to the leasing service, the "waiver" is without effect as a matter of law and both the successful drawee and the leasing service are required to make a showing as to their respective interests under 43 CFR 3102.7.

3. Equitable Adjudication: Generally -- Estoppel -- Federal Employees and Officers: Authority to Bind Government -- Oil and Gas Leases: Applications: Generally

The Department is not estopped from rejecting an oil and gas lease offer because the offeror allegedly relied on the acceptance by employees in a BLM state office of a plan designed by the offeror to remove a fatal defect in the offer, where the offeror had both constructive and actual knowledge that the BLM state office employees are subordinate personnel and that their decisions are subject to reversal on review at the Secretarial level.

APPEARANCES: David B. Kern, Esq., Milwaukee, Wisconsin, for Nancy L. Stewart ^{1/} and Resource Service Company, Inc.; E. B. Grimes, Esq.,

^{1/} Both BLM and E. G. Grimes have filed motions to dismiss Stewart's appeal, alleging that the law firm, Quarles and Brady, was not authorized to file a notice of appeal on her behalf. While Grimes succeeded in raising a substantial question as to this firm's authority to do so, Quarles and Brady have settled this matter fully by filing an affidavit by Nancy Stewart stating that "Resource Service Company, and its attorneys Quarles and Brady, have had my consent at all times to take whatever action is necessary in dealing with the Interior Department to enable me to receive my lease." Accordingly, we recognize that Stewart's notice of appeal, which was prepared by Quarles and Brady, was validly filed on her behalf and deny BLM's and Grimes' motions to dismiss.

Robstown, Texas, pro se; Harold J. Baer, Jr., Esq., Office of the Regional Solicitor, Department of the Interior, Denver, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

On January 23, 1978, Nancy L. Stewart filed a simultaneous noncompetitive oil and gas lease offer drawing entry card (DEC) for parcel WY 145 with the Wyoming State Office, Bureau of Land Management (BLM). Stewart's DEC, which was apparently completely filled out, bore her signed certification that she was the sole party in interest in the offer and lease, if issued, and was drawn with first priority in the February 1978 drawing for this parcel.

On May 3, 1978, BLM notified Stewart that it required further evidence from her in order to determine whether she had violated the regulations requiring disclosure of all parties in interest and forbidding multiple filings by a party on one parcel. Specifically, it requested a copy of any service agreement between her and Fred Engle, d.b.a. Resource Service Company (now Resource Service Company, Inc.) (RSC), whose address appeared on her DEC.

On May 11, 1978, before Stewart had responded, E. B. Grimes, whose DEC for this parcel had been drawn with second priority, filed a protest against the validity of Stewart's DEC. Grimes asserted that Stewart had a binding agreement with RSC which caused a conflict with 43 CFR 3102.7, requiring that an offeror disclose all parties having interests in the offer, and 43 CFR 3112.5-2, forbidding multiple filings by one party on a single parcel.

On May 17, 1978, Stewart filed a copy of her service agreement with Engle, dated June 7, 1977, which authorized Engle to act as

fn. 1 (continued)

BLM has moved to apply the doctrine of collateral estoppel to dismiss the appeal in view of our numerous previous holdings on identical issues. The presence of Stewart, who has not appeared in any of these previous proceedings, is enough to justify our disposing of this appeal by decision. Accordingly, BLM's motion is denied.

Finally, Grimes asserts that Resource Service Company, Inc., which has appealed, is an entity distinct from Fred Engle, d.b.a. Resource Service Company, and that the former has no standing to appeal, as it did not exist at times pertinent to this dispute. RSC, Inc., may appeal if it is "adversely affected" by BLM's decision and could probably establish this fact simply by showing that it has succeeded to rights previously owned by Fred Engle, d.b.a. RSC. However, as it is unnecessary to do so to resolve this dispute, there is no need to inquire further into this question, and Grimes' motion is denied.

Stewart's sole and exclusive agent to sell the lease for 5 years in return for specified percentages of the sale price and of any retained overriding royalties. Engle's right was vested by the contract itself, was not at Stewart's option, and applied whether Engle or Stewart arranged the sale.

BLM suspended its consideration of the validity of Stewart's offer pending judicial action on appeal presenting controlling issues of law, and, on January 15, 1981, issued its decision which rejected her offer. BLM held that the service agreement gave Engle an "interest" in Stewart's offer which was not disclosed at the time the offer was filed, as required by 43 CFR 3102.7 (1979). Stewart and RSC appealed this decision.

We have considered the question of the validity of offers filed by RSC clients in these circumstances many times in the past and have held consistently that they must be rejected. Robert E. Belknap, 55 IBLA 200 (1981); Wilbur G. Desens, 54 IBLA 271 (1981); Inexco Oil Co., 54 IBLA 260 (1981); Home Petroleum Corp., 54 IBLA 194 (1981); Estate of Glenn F. Coy, 52 IBLA 182, 88 I.D. 236 (1981); D. R. Weedon, Jr., 51 IBLA 378 (1980); Donald W. Coyer (On Judicial Remand), 50 IBLA 306 (1980), aff'd, Coyer v. Andrus, Civ. No. C 80-370K (D. Wyo. May 5, 1981) (appeal to 10th Cir. pending); Fredrick W. Lowey, 40 IBLA 381 (1979), aff'd, Lowey v. Watt, Civ. No. 79-3314, (D.D.C. May 28, 1981); Alfred L. Easterday, 34 IBLA 195 (1978); Sidney H. Schreter, 32 IBLA 148 (1977); Lola I. Doe, 31 IBLA 394 (1977). We have also affirmed BLM's rejection of offers in which other leasing services held similar undisclosed interests at the time their client's offers were filed. Gertrude Galauner, 37 IBLA 266 (1978); Marty E. Sixt, 36 IBLA 374 (1978). We adhere to these holdings.

[1, 2] The service agreement in effect at the time Engle filed Stewart's offer gave Engle an "interest" in this offer. 2/ This interest was not abrogated by Engle's unilateral attempt to disclaim it, as Engle did not communicate this putative waiver to Stewart or receive any consideration from her to bind the contract. 3/

In Lowey v. Watt, supra, Judge Pratt reviewed our ruling on this point in Lowey, supra, de novo and held as follows:

[T]he IBLA ruled that * * * the disclaimer * * * was * * * invalid because not mutually consented to or supported by

2/ Donald W. Coyer (On Judicial Remand), supra at 312; Frederick W. Lowey, supra at 383; Alfred L. Easterday, supra at 198; Sidney H. Schreter, supra; Lola I. Doe, supra.

3/ Donald W. Coyer (On Judicial Remand), supra at 313; Frederick W. Lowey, supra at 384-92; Alfred L. Easterday, supra at 199.

consideration. Although authorities are split as to the requirements for an effective disclaimer of a contract right, the common law and majority rule hold a disclaimer valid only if given under seal or in exchange for consideration. Absent a seal or consideration, the disclaimer was ineffective unless the obliged party relied on it to his detriment. Since RSC's disclaimer was not under seal, nor supported by consideration, nor communicated to RSC's clients until after a first place drawing, it did not eliminate its interest in its clients' lease offers.

We note additionally that this purported amendment and disclaimer, by its own terms, does not apply to the service agreement between Engle and Stewart. This agreement was entered into on June 7, 1977, well after January 13, 1977, the date of the amendment and disclaimer, which clearly applies only to agreements extant on January 13. Thus, the purported disclaimer, even if legally effective, could not have applied to these offers. Home Petroleum Corp., *supra* at 204; D. R. Weedon, Jr., *supra* at 382; Fredrick W. Lowey, *supra* at 385-86.

In Lowey v. Watt, *supra*, Judge Pratt also held as follows:

The IBLA concluded * * * that RSC's disclaimer was not effective to eliminate its interest in any client's lease offer for which the service agreement was signed after the date of the disclaimer. We find this conclusion unassailable. The disclaimer states that Engle "is a party to various contracts" and that he waives any rights "which [he] may have by reason of said service agreements." * * * In addition to the disclaimer's plain language, it is well established that a release that purports to discharge future rights and claims not yet in existence is not operative to discharge any rights under a contract made subsequently to the release.

[A] manifested intention [to create an obligation that] is in conflict with the words of the release . . . will prevail over it because later in time So, also, a contract that is entirely inconsistent with the terms of a previously executed release will prevail over that previous release and destroy its operation.

5A CORBIN, CONTRACTS § 1238, at 560 (1964). The exclusive agency provision of the subsequent service agreement was entirely inconsistent with the language of the earlier release. * * * The earlier disclaimer could not reach or eliminate RSC's interest in * * * offers [such as Stewart's]. [Footnote omitted; emphasis in original.]

Stewart failed to disclose Engle's interest at the time she made her offer as required by 43 CFR 3102.7, and it must therefore be rejected because it violates this regulation. 4/

[3] The question of whether the Department is estopped from rejecting Engle's clients' offers was fully considered in Donald W. Coyer (On Judicial Remand), supra at 313-14. We adhere to our holding there that the Department is not estopped to reject these offers.

After noting that the authorities have held that "affirmative misconduct" may give rise to equitable estoppel against the Government, Judge Pratt held as follows about the same circumstances at issue in the instant case:

The BLM officials' actions do not approach the requisite level of "affirmative misconduct." Although the officials erred in agreeing to accept RSC's disclaimer, they did so at RSC's request and to protect RSC's clients until RSC could put a revised service agreement into effect. Further, it would be a misstatement to assert that RSC is without blame. It had notice as early as December of 1976 that its exclusive agency provision was improper and was in clear violation of the regulations, yet it refused to change its service agreement for fifteen months. RSC could have entered new service agreements with its existing clients but declined to do so. Plaintiffs have no entitlement to the leases for which they submitted offers, but a mere hope or expectation. Schraier v. Hickel, 419 F.2d 663, 666 (D.C.Cir. 1969); McDade v. Morton, 353 F. Supp. 1006, 1010 (D.D.C. 1973), aff'd, 494 F.2d 1156 (D.C.Cir. 1974). Against these considerations we must balance * * * the public interest in fair administration of the noncompetitive lease program. All offerors are entitled to assurance that the Government will impartially enforce its regulations. Plaintiff's claim of Governmental estoppel is without merit. [Footnote omitted.]

Similarly, in D. R. Weedon, Jr., supra at 383-84, we considered and rejected the suggestion of Engle and his clients that it is unfair to give retroactive effect to our decision to reject offers such as this in which Engle had an undisclosed interest. We adhere to our holding there as well.

4/ Donald W. Coyer (On Judicial Remand), supra; Gertrude Galauner, supra; Marty E. Sixt, supra; Alfred L. Easterday, supra; Sidney H. Schreter, supra; Lola I. Doe, supra.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Bruce R. Harris
Administrative Judge